

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2014-04
Issued May 8, 2014**

FACTS

The inquiring attorney represents the administrator of a decedent's estate in probate court. The inquiring attorney states that he/she is preparing to close the estate. In order to prepare an accounting, the inquiring attorney asked the administrator for financial information pertaining to the estate. The administrator disclosed to the inquiring attorney that he/she borrowed the assets of the estate account to pay for the administrator's own medical expenses. The inquiring attorney states that the administrator indicates an intent to replace the borrowed funds but that she has provided no evidence of ability to do so.

ISSUE PRESENTED

The inquiring attorney asks whether he/she is permitted or required to disclose to the probate court or others the fact that the administrator has diverted the estate's funds.

OPINION

The administrator's disclosure to the inquiring attorney that he/she has diverted the estate's funds is a confidential communication which is protected pursuant to Rule 1.6. The inquiring attorney is not permitted to reveal the administrator's disclosure without the client's consent.

REASONING

Rule 1.6 of the Rules of Professional Conduct states as follows.

Rule 1.6. Confidentiality of information. (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(3) to secure legal advice about the lawyer's compliance with these Rules; or

(4) to comply with other law or a court order.

In this inquiry, the administrator's disclosure to the inquiring attorney that he/she used the estate's funds to pay for the administrator's own medical expenses is information relating to the representation of a client. The information is therefore protected from disclosure unless the exceptions stated in Rule 1.6(b) apply, including disclosures that are permitted or required by court order, or other law.

None of the exceptions to Rule 1.6 applies to the facts presented in this inquiry. Therefore, the inquiring attorney is not permitted to disclose the administrator's misconduct to the court, or to others, without the client's consent. See Rhode Island Supreme Court Ethics Advisory Op. 94-78 (1994) (Rule 1.6 prohibited lawyer from disclosing that attorney-executor may have diverted estate funds); Rhode Island Supreme Court Ethics Advisory Panel Op. 96-08 (1996) (Rule 1.6 prohibited attorney from disclosing that client diverted funds in violation of court order); Rhode Island Supreme Court Ethics Advisory Panel Op. 99-06 (1999) (lawyer prohibited from disclosing that client, who was sentenced to drug treatment facility, left facility.)

The inquiring attorney may not file with the probate court an accounting which discloses the administrator's use of the funds without the client's consent. See Rule 1.6. Neither may the inquiring attorney file with the court an accounting that does not disclose the diversion of the funds. See Rule 3.3(a) (lawyer shall not knowingly make false statement of fact or law to a tribunal, or offer evidence lawyer knows to be false.); Rule 1.2(d) (lawyer shall not assist client in conduct lawyer knows to be criminal or fraudulent.) Based on the facts as presented, the Panel advises the inquiring attorney that Rule 1.6 prohibits him/her from disclosing the administrator's misconduct without the client's consent, and further advises the inquiring attorney to seek to withdraw from the representation.